

#### Members

Rep. Linda Lawson, Chairperson  
Rep. Matt Pierce  
Rep. Kathy Richardson  
Rep. Eric Koch  
Sen. Richard Bray, Vice-Chairperson  
Sen. Randall Head  
Sen. Timothy Lanane  
Sen. Lonnie Randolph  
Chief Justice Randall Shepard  
Thomas Felts  
David Whicker  
Michael J. Kruk  
Jill Jackson



## COMMISSION ON COURTS

Legislative Services Agency  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554

#### LSA Staff:

Timothy Tyler, Attorney for the Commission  
Mark Goodpaster, Fiscal Analyst for the  
Commission

Authority: IC 33-23-10

### MEETING MINUTES<sup>1</sup>

Meeting Date: October 15, 2009  
Meeting Time: 9:00 A.M.  
Meeting Place: State House, 200 W. Washington  
St., Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Rep. Matt Pierce; Rep. Kathy Richardson; Rep. Eric Koch; Sen. Richard Bray, Vice-Chairperson; Sen. Randall Head; Sen. Timothy Lanane; Judge John Baker (for Chief Justice Randall Shepard); Thomas Felts; David Whicker; Michael J. Kruk; Jill Jackson.

**Members Absent:** Rep. Linda Lawson, Chairperson; Sen. Lonnie Randolph.

Sen. Richard Bray, Vice-Chairperson of the Commission on Courts (Commission), called the meeting to order at 9:02 A.M. Sen. Bray stated he would be acting as chairperson because Rep. Lawson was unable to attend the meeting. He indicated that, if possible, Rep. Lawson still wanted the Commission to finish its work at this meeting.

The first person to testify was Chief Justice Randall Shepard of the Indiana Supreme Court. He stated that despite the recent recession, case filings continued to increase in

---

<sup>1</sup> Exhibits and other materials referenced in these minutes can be obtained electronically by requesting copies at [licrequests@iga.in.gov](mailto:licrequests@iga.in.gov). Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Indiana trial courts. He stated there were more than 2,000,000 cases filed in 2008.

The Chief Justice continued by stating the increase in cases filed meant that litigants in some counties faced delays. However, he stated he realized that ongoing state revenue difficulties made it hard to add new judicial officers to handle the increase. He said one tool the judiciary currently had to deal with this problem was retired judges acting as senior judges. The Chief Justice stated he would like the General Assembly to add retired magistrates to the group of persons eligible to serve as senior judges to provide additional help with these increasing caseloads.

In response to questions from Commission members, Chief Justice Shepard said retired magistrates acting as senior judges would only exercise the powers they had exercised as full-time magistrates. He also said senior judges are paid a per diem of \$100 for their first 30 days of service during a calendar year and could be paid a per diem of up to \$250 after that. However, he stated there usually was not enough money appropriated to pay a per diem of more than \$125 to \$175 to a senior judge who served after the first 30 day period. He stated money paid to senior judges came out of funds already appropriated to the Supreme Court for judicial payroll.

After a brief discussion, the Commission voted 11 to 0 (by voice vote) to recommend that legislation be enacted to amend the senior judge statutes to allow magistrates to serve as senior judges.

The next person to testify was Justice Frank Sullivan of the Indiana Supreme Court. Justice Sullivan distributed a packet of information to the Commission (Exhibit #1) concerning the Judicial Technology and Automation Committee (JTAC), the progress being made in implementing the Odyssey case management system, and information on other JTAC programs.

Justice Sullivan stated that in 2008 the Commission recommended increasing the automated record keeping fee from \$7 to \$10 for a four year period. He asked the Commission to make the same endorsement this year. He stated the additional revenue the increase would generate would allow JTAC to be more aggressive in installing the Odyssey case management system in those counties that did not have it. He said it would also help JTAC implement other projects the General Assembly had given to JTAC for which JTAC had not received additional funding.

In response to questions from Commission members, Justice Sullivan stated changes made to the automated record keeping fee in HEA 1001-2009(ss) diverted about 10% of the fee to the homeowners protection unit established by the Attorney General. He also stated the reason for asking for the fee increase was to allow JTAC to deploy Odyssey faster and not because the costs of the case management system were increasing.

Justice Sullivan also stated that, with the fee increase, Odyssey could be installed in those counties on the JTAC "waiting list" in two years and in all counties in not more than five years. He stated that if at some point there were counties that wanted to stay with their own case management system instead of using Odyssey, the judicial branch would first consult with the executive and legislative branches before the Supreme Court would issue any mandates concerning these counties.

The next person to testify was Morgan County Clerk Peggy Mayfield. Ms. Mayfield stated counties did not receive any of the automated record keeping fee. She said counties sent millions of dollars to the state to implement the Odyssey case management system whether or not they were on the Odyssey system. She stated she would like to see some

of this fee diverted to the counties to help make record keeping more efficient. Ms. Mayfield also stated many counties had incurred problems by delaying upgrades to their current record keeping systems because they were told "Odyssey is coming."

The next person to testify was LaGrange County Clerk Beverly Elliott. Ms. Elliott stated LaGrange County had to install a new system in 2005 after the JTAC case management system project stalled. She stated the system that was installed in LaGrange County could do the same things Odyssey could do plus several that Odyssey could not do. She said installing Odyssey in LaGrange County would be a "backwards step." She asked that some of the automated record keeping fee be diverted to counties to allow them to maintain their current systems.

Judge Baker stated JTAC was supposed to be more than just a case management system. He stated it was important for all courts in all counties to be able to share information as quickly as possible.

Ms. Mayfield stated JTAC was originally just supposed to create standards for data management but had gone beyond that. She also stated counties incurred some costs when converting to the Odyssey system, including the cost of acquiring new hardware.

Rep. Richardson stated that, as the former Hamilton County Clerk, she sees both sides of the issue. She said she sympathized with counties that could not go forward with updating data management systems while waiting on JTAC, but she also sees the positive things JTAC has done since the system was installed in Hamilton County.

Ms. Jackson said as Johnson County Clerk she felt the same way about JTAC that Rep. Richardson did. She thought the best analogy to the JTAC system was the statewide voter registration system. She said there were "huge advantages" to the statewide registration system, but the downside included putting many vendors out of business. She said JTAC had taken a long time to develop the system.

The next person to testify was Candy Meyers, Noble County Clerk. Ms. Meyers said the implementation of the JTAC system was ultimately about accountability to both taxpayers and litigants concerning where all the money is going. She said her data management system does everything the state requires and is better than the Odyssey system.

After a brief discussion, the Commission voted 9 to 1 (by show of hands) to recommend that legislation be enacted to increase the automated record keeping fee from \$7 to \$10 from July 1, 2010, to July 1, 2014, and then to decrease the fee to \$7 after June 30, 2014.

The next person to testify was Judge Thomas Felts of the Allen Circuit Court. Judge Felts stated the Commission had approved his request last year to replace his county paid hearing officer with a state paid magistrate. He said that provision was not enacted during the 2009 Session and he asked the Commission to approve the request again this year.

Judge Felts said this hearing officer performed Title IV-D child support services which meant two-thirds of their salary was paid by the federal government. He stated Allen County paid the hearing officer approximately \$40,000 a year. He said since the idea was to have the magistrate perform these same Title IV-D services, only this amount would be passed on to the state as part of the new magistrate's salary.

After a brief discussion, the Commission voted 10 to 0 (by show of hands) to recommend that, subject to the availability of state funds, legislation be enacted to eliminate the hearing officer position appointed by the judge of the Allen Circuit Court and instead allow

the judge to appoint a second magistrate.

The next person to testify was Rep. Cherrish Pryor of Indianapolis. She said she was coming before the Commission to request that the Commission endorse legislation to convert the Marion Superior Court commissioners to magistrates. She stated she believed this conversion would be "revenue neutral." Rep. Pryor then distributed a packet of information (Exhibit #2) to Commission members.

The next person to testify was Judge Heather Welch of the Marion Superior Court. Judge Welch stated commissioners and magistrates perform the same duties, but the salary of a commissioner was paid by a county while the salary of a magistrate was paid by the state.

Judge Welch said the Marion Superior and Circuit Courts handled approximately 19% of all cases filed in Indiana and remitted approximately 15% of the revenues collected by the courts back to the state. However, she stated only 53 of 79, or 67%, of the judicial officers in Marion County were funded by the state while 71% were funded by the state in Lake County, 88% in Allen County, and 100% in St. Joseph County.

Judge Welch continued by stating that the most recent weighted caseload measurements indicated Marion County needed 99 judicial officers to perform its judicial functions while it had only 79. However, she stated Marion County was not asking for more judicial officers but only to convert existing commissioner positions to magistrates.

The next person to testify was Judge Timothy Oakes of the Marion Superior Court. Judge Oakes said it was recently determined that a \$35 fine imposed by the Marion County courts that was being deposited in the county general fund should be deposited in the state general fund instead. He stated this fine could be used to offset the cost to the state to pay for new magistrate positions in Marion County. Judge Oakes continued by stating that the amount of revenue from this fine now being deposited by Marion County in the state general fund could offset the cost of adding 19 to 22 magistrate positions in Marion County.

After a brief discussion, the Commission voted 10 to 0 (by show of hands) to recommend that, subject to the availability of state funds, legislation be enacted to allow Marion County to convert commissioner positions to magistrate positions.

Rep. Koch then introduced Judge Stephen Heimann of the Bartholomew Circuit Court. Judge Heimann stated Bartholomew County was requesting a third superior court judge. He stated they were asking for this judgeship to begin July 1, 2011, so there would not be any immediate impact on the state budget. Judge Heimann then distributed a packet of information (Exhibit #3) concerning this issue to the Commission members.

Judge Heimann continued by stating recent weighted caseload measurements indicated Bartholomew County need 7.1 judicial officers but only had 5.2. He said the 5.2 figure included a commissioner position that would be eliminated if the county added a third superior court judge. Judge Heimann also stated Bartholomew County had implemented many local programs that resulted in fewer adult and juvenile offenders being sent to the Department of Correction thus saving the state money.

After a brief discussion, the Commission voted 10 to 0 (by show of hands) to recommend that, subject to the availability of state funds, legislation be enacted to add a third judge to the Bartholomew Superior Court beginning July 1, 2011.

The next person to testify was Judge John Surbeck of the Allen Superior Court. Judge

Surbeck stated he was Chairperson of the Problem Solving Courts Committee of the Indiana Judicial Center. Judge Surbeck then distributed a memorandum (Exhibit #4) to Commission members that contained information concerning the Problem Solving Courts Committee. Judge Surbeck said the goal of the Committee was to encourage the broad integration of the problem solving philosophy into the administration of justice to improve court processes and outcomes while preserving the rule of law.

Judge Surbeck said the General Assembly had previously enacted legislation to formalize drug courts and reentry courts. He said the Committee was now asking the Commission to endorse new legislation that would consolidate those courts along with other problem solving court initiatives into a general problem solving courts statute. Commission staff then distributed a proposed draft of this legislation (Exhibit #5) to Commission members.

The next person to testify was Judge Dennis Carroll of the Madison Superior Court. Judge Carroll stated he presided over one of the newer problem solving courts in the state that dealt with offenders with mental health issues. Judge Carroll stated he felt there needed to be some statutory framework that established a system of standards for problem solving courts other than the drug and reentry courts.

In response to questions from Commission members, Judge Surbeck stated the proposed legislation would allow problem solving courts to establish user fees for services provided to participants but did not contain any new filing fees. Mary Kay Hudson, the Indiana Judicial Center Problem Solving Courts Administrator, stated any user fees imposed by problem solving courts would have to be approved by the Board of Directors of the Indiana Judicial Conference. Ms. Hudson added user fees typically support program services.

In response to additional questions from Commission members, Ms. Hudson stated problem solving court judges could review the ability of persons to pay user fees and would have the flexibility to waive fees. She said while it was possible some costs could be passed on to counties, outside funding sources could also be used for costs. For example, she stated most drug courts were currently funded by grants.

Ms. Hudson continued by stating problem solving courts were a unique concept nationally. She said Indiana was currently the only state that had formal certification processes for these courts.

After a brief discussion, the Commission voted 11 to 0 (by show of hands) to recommend that legislation be enacted to consolidate existing statutes concerning the establishment of drug courts and reentry courts into a generic statute that allows the establishment of additional problem solving courts that operate under the oversight of the Judicial Conference of Indiana.

Sen. Bray then stated there were persons who did not testify at the Commission's first meeting concerning asbestos related illnesses that wished to distribute written testimony to Commission members. Sen. Bray said these people were opposed to making any changes to current laws concerning this issue. Ed Roberts of the Indiana Manufacturers Association (IMA) then distributed a packet of information (Exhibit # 6) to Commission members entitled "Changes to Indiana's Statutes of Repose Would Harm Indiana Business" submitted by the IMA, the Indiana Chamber of Commerce, the Associated Builders and Contractors, Inc., the National Federation of Independent Business-Indiana, the Indiana Energy Association, the Indiana Petroleum Council, and the Insurance Institute of Indiana.

After a brief discussion, the Commission decided to not take any votes that concerned issues involving asbestos related illnesses due in part to the fact that all members had not

been able to hear testimony from all the interested parties.

Sen. Bray then stated the Commission would consider making recommendations concerning other topics discussed at the Commission's first meeting.

After a brief discussion, the Commission voted 11 to 0 (by voice vote) to recommend that the ongoing consolidation of probation services should continue to be left to the discretion of the Indiana Judicial Conference.

After a brief discussion, the Commission voted 9 to 1 with 1 abstention (by show of hands) to recommend that legislation be enacted to repeal provisions established in HEA 1001-2009(ss) relevant to the out-of-state placement of juveniles by trial courts and to instead restore the juvenile placement expedited review process established by HEA 1001-2008 (the so called "rocket docket").

Jane Seigel, Executive Director of the Indiana Judicial Center, then asked if the Commission would reconsider certain legislation the Commission endorsed last year that was not enacted during the 2009 session. Sen. Bray stated that, since he was only the acting chairperson, he was not going to take action on any subjects that were not on the posted agenda.

The Commission then voted 11 to 0 (by voice vote) to approve the preparation of a final report for 2009 that contains a summary of the Commission's 2009 work program and a list of the recommendations made by the Commission, subject to distribution to and review by the Commission members.

Sen. Bray then added that the adoption of the final report was also subject to any additional meetings Rep. Lawson might call in October.

Sen. Bray adjourned the meeting at 12:07 P.M.